

STATE OF NORTH CAROLINA
CUMBERLAND COUNTY

Re'd 6/1/16
IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15-EDC-07025

████, by and through his mother, █████,
Petitioner
v.
CUMBERLAND COUNTY BOARD OF EDUCATION,
Respondent

ORDER

This matter was called for hearing before the undersigned Administrative Law Judge on June 1, 2016, pursuant to an Order dated April 18, 2016 ("Pretrial Order"). That Pretrial Order required the parties to exchange proposed exhibits and witness lists by Wednesday, May 26, 2016. Respondent Cumberland County Board of Education complied with the Pretrial Order, but petitioner K.H. did not.

Independent of the Pretrial Order here, applicable state and federal regulations establish a very clear and specific right when one party fails to disclose evidence in a timely manner. NC 1504-1.13(a) from the North Carolina Department of Public Instruction and its federal counterpart (34 C.F.R. § 300.512) state that "Any party * * * has the right to — (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before that hearing." Because the petitioner failed to make her disclosures of evidence within the required time period, Cumberland County has the unilateral right to block introduction of her evidence and has done so in this matter.

Accordingly, the undersigned finds as fact the following:

a. This case was originally filed on September 23, 2014. Petitioner took a voluntary dismissal without prejudice just three days later on September 26, 2014. She refiled her action on September 24, 2015, within the one-year deadline.

b. In the current action, petitioner asked the Office of Administrative Hearings for several extensions of time within which to obtain new counsel and to respond to the school district's then-pending discovery requests. Those extension requests and OAH orders are incorporated by reference.

c. Despite several extensions and the retention of new counsel, [REDACTED] failed to respond fully to the school district's discovery requests and was sanctioned by the undersigned.

d. Petitioner failed to comply with the deadline of the Pretrial Order as discussed above.

e. Respondent has exercised its unilateral right under state and federal regulations to prohibit the introduction of any evidence not disclosed to it prior to five business days before the hearing. Petitioner failed to disclose any evidence by that deadline, and thus, she may not introduce any evidence. Without the ability to introduce documentary or testimonial evidence, petitioner may not prosecute her case further.

f. The undersigned has considered lesser possible outcomes than dismissal, such as a less absolute limitation on what petitioner could introduce into evidence or a continuance of the hearing, and finds those inappropriate. The regulations discussed above give the hearing officer no leeway in ruling on evidence that has not been disclosed. In this situation, respondent has the clear unilateral right to block introduction of any evidence from petitioner. Petitioner has shown no good cause for yet another continuance in this case. Hearing officers are supposed to move special education disputes to swift resolution, and this case has lingered far too long as it is. Finally, petitioner's problems are solely of her own making.

Dismissal is therefore appropriate for two separate reasons: First, because respondent has exercised its regulatory prerogative to block petitioner from introducing any evidence; and second, because once again, petitioner has failed to comply with an Order from this body. Therefore, because the petitioner failed to comply with (a) this Court's Pretrial Order and (b) the deadline established in the applicable state and federal regulations, it is ordered that her action is hereby dismissed pursuant to N.C. R. Civ. P. 41(b).

SO ORDERED, this the 1st day of June, 2016.

A handwritten signature in cursive script, reading "Selina M. Brooks", is written over a horizontal line.

Selina M. Brooks
Administrative Law Judge Presiding

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into an official depository of the United States Postal Service:



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This the 2nd day of June, 2016.

Susan M. Beasley

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